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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.H., Defendant and Appellant.	E072823 (Super.Ct.Nos. J274534 & RIJ1501184) OPINION
In re J.H., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.H. et al., Defendants and Respondents; J.H. Defendant and Appellant.	E072824 (Super.Ct.No. J278098)

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Aurora Elizabeth Bewicke, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Jamila Bayati, Deputy County Counsel for Plaintiff and Respondent San Bernardino County Department of Children and Family Services.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Warren J. Williams, Deputy Attorneys General, for Plaintiff and Respondent The People of the State of California.

No appearance for Defendants and Respondents R.H. and J.H.

On October 9, 2018, while appellant J.H. was a ward of the court under Welfare and Institutions Code[1] section 602 (case No. E072823 (23)), San Bernardino County Children and Family Services (CFS) initiated dependency proceedings (case No. E072824 (24)). Thus, minor became subject to dual status supervision, and probation was designated the lead agency. Seven months later, in May 2019, the juvenile court terminated dependency proceedings, effectively modifying dual status jurisdiction to single status jurisdiction.

On appeal, J.H. raises several arguments challenging the juvenile court's action.[2]

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] J.H. asserts that her "statutory rights and right to due process were violated by the findings and orders" of the dependency court, including: (1) the "unauthorized entry

Essentially, she contends the court violated her right to due process and failed to comply with the requirements of Welfare and Institutions Code section 241.1 and California Rules of Court,[3] rule 5.512, when it dismissed her dependency case, effectively reversing a previous section 241.1 status determination. In response, CFS argues J.H.'s "issue is moot, as [she] was discharged as a ward before her 18th birthday . . . and she rejected CFS's attempts to provide her services." Alternatively, CFS asserts dismissal was warranted because San Bernardino County changed "from a dual status protocol, which allowed a minor to be a ward and dependent simultaneously, to single status protocol, which allows a minor to hold only one status, either as a delinquent or a dependent." We reject J.H.'s contentions and affirm.

I. PROCEDURAL BACKGROUND AND FACTS

A. Introduction.

Since 2000, multiple county family services agencies have responded to allegations that J.H.'s parents have neglected or physically abused their children. Simultaneously, the parents accrued extensive criminal records, including weapons, drug,

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of conflicting orders; (2) the untimely status determination; (3) the failure to order a new section 241.1 committee assessment in light of the county's new approach, leading to an uninformed ruling grounded in insufficient evidence; (4) the court's refusal to order J.H.'s social worker present, in violation of J.H.'s right to due process at the status determination hearing; (5) the court's failure to follow the statutorily-required implementing provisions contained in any version of the county's various section 241.1 protocols; (6) the court's failure to consider each of the required factors and state its reasoning for its section 241.1 status determination; (7) the court's evidenced application of the wrong legal standards; and (8) the court's reliance on invalid portions of a temporary, pilot version of the county's section 241.1 protocol."

[3] Subsequent rule references are to the California Rules of Court.

various theft, vandalism, battery, and disturbing the peace charges. J.H. also developed a significant criminal record.

B. The First Dual Status Period.

In 2014, J.H. (age 12) engaged in a fight at school and was caught possessing marijuana and tear gas. Subsequently, in early 2015, the Riverside County District Attorney initiated section 602 proceedings (Riverside County case No. RIJ1500166) and J.H. entered into an informal program of supervision, which allowed her to live with her parents under specific terms and conditions. (§ 654.2.)[4] However, by October 23, 2015, Riverside County Department of Public Social Services (DPSS) initiated dependency proceedings (Riverside County case No. RIJ1501184) based on allegations father, who was "unable to adequately parent the child due to the child's negative behaviors," "inappropriately disciplined" J.H., and mother was "unable" to provide for her. J.H. was adjudged a dependent of the court and placed in foster care.

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[4] Section 654.2, in relevant part, provides: "(a) If a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of supervision as set forth in Section 654. If the probation officer recommends additional time to enable the minor to complete the program, the court at its discretion may order an extension. Fifteen days prior to the final conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall submit to the court a followup report of the minor's participation in the program. . . . If the minor successfully completes the program of supervision, the court shall order the petition be dismissed. If the minor has not successfully completed the program of supervision, proceedings on the petition shall proceed no later than 12 months from the date the petition was filed."

After fostering J.H. for approximately six weeks, the foster mother requested J.H.'s removal due to her defiant behavior and poor decisions regarding school attendance, curfew, and drug use. J.H. was returned to father's home on December 9, 2015.[5] Also in December 2015, probation reported J.H. continued testing positive for drug use and recommended revoking her program of supervision and proceeding on the petition. The juvenile court agreed with probation and on January 4, 2016, J.H. was declared a ward of the court pursuant to section 602. Given J.H.'s dual status (both a dependent and a ward of the court), the matter was referred for a section 241.1 report, and DPSS and probation jointly recommended that J.H. be declared a dual status youth with DPSS as the lead agency and dependency as the lead court.

In January 2016, both parents were charged with various drug charges, and J.H. was arrested for shoplifting and burglarizing her family home. In April, she was arrested for starting a fight. She was diagnosed with bipolar disorder, with manic psychotic features, and chronic cannabis use disorder. Juvenile petitions were filed and, in August 2016, J.H. (age 14) was sentenced to one year four months, and placed in a group home. J.H. remained incorrigible, refused to take her prescribed psychotropic medications, continually disobeyed curfew, and repeatedly left the group home without permission. She was abusing marijuana, becoming intoxicated, and engaging in risky conduct.

In January 2017, J.H. stole a phone from a student, ran away from her group home, and remained absent without leave (AWOL); a warrant for her arrest was issued.

[5] Mother was often in custody during the dependency cases.

Another section 602 petition was filed. By March, when J.H. was located and arrested, she had 20 unexcused absences from school, she was partying and drinking with older males, engaging in sexual activity, and she was allegedly being groomed into human trafficking. J.H. was sent to a group home in Ventura County. At the contested 12-month review hearing on May 18, 2017, the juvenile court terminated mother's reunification services, but authorized "[u]nsupervised, overnight, weekend visits and placement" for father. According to the social worker, a group home "remains appropriate and necessary" for J.H., however she could return to her family home with "the assistance of Wraparound program."

By August 2017, J.H. had been in "two foster homes, five group homes, one shelter, and three times in juvenile hall." Her multiple moves were due to her negative behavior. For example, on August 17, 2017, while residing in the Ventura County group home, J.H. keyed the home manager's car (causing approximately $1,800 in damages) and was charged with vehicle vandalism. The matter was transferred to Riverside County, and the juvenile court sustained the petition. The section 241.1 report filed on September 29, 2017, summarized J.H.'s use of both legal and illegal drugs, her absence from the group home without permission, her "5150"[6] evaluations, her self-harming behaviors, and her academic performance. J.H. expressed her desire to return to living

[6] Section 5150 provides in part, "When a person, as a result of mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer . . . may, upon probable cause, take or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention . . . ." (§ 5150, subd. (a).)

with father. Both probation and DPSS recommended she "be continued a ward of the Court and remain a Dual Status youth with DPSS remaining lead agency and dependency remaining lead Court." The court accepted the recommendation.

In January 2018, J.H.'s dependency and delinquency matters were transferred to San Bernardino County, where father was residing: Riverside County dependency case No. RIJ1501184 became J274523, and Riverside County delinquency case No. RIJ1500166 became J274534. On April 4, 2018, J.H. (age 16) was released to father's custody. Sixteen days later, he was granted sole legal and physical custody of J.H., and the juvenile court dismissed the dependency case since "conditions no longer exist justifying initial jurisdiction." Nonetheless, J.H. remained a ward of the court on probation.

In July 2018, J.H. was arrested for a parole violation when she resisted arrest. She was detained in juvenile hall. According to the August 3, 2018 report, the probation officer noted that J.H. "has been on a grant of formal probation since the age of fourteen (14). As of this date, she has absconded from her group homes, probation supervision, and sustained new law offenses in other counties. [She] is well aware of the consequences but appears not to care." The report recommended that she "be continued a ward of the Court, placed in the custody of her father . . . and maintained in the home of father, on terms and conditions of probation dated April 2, 2018." Based on probation's recommendation, the juvenile court placed J.H. with father on modified terms of probation.

C. The Second Dual Status Period.

In September 2018, father contacted probation and reported that J.H. had left home without permission, later returning to burglarize it and make terrorist threats. Father informed probation that he was "'fed up' and no longer want[ed J.H.] to return home as she [was] jeopardizing her sibling's safety and her father's completion of closing his current [CFS] case for the younger children." Subsequently, on October 9, 2018, CFS initiated new dependency proceedings as to J.H. (San Bernardino County case No. J278098) alleging, inter alia, there is a substantial risk that she will suffer serious physical harm due to her parents' inability to supervise her and father's refusal to take custody of her following discharge from juvenile hall. Also, on October 10, 2018, a subsequent section 602 petition was filed charging J.H. with first degree residential burglary of her father's home and threatening to kill him or cause great bodily injury. J.H. was detained, and the juvenile court referred the matter to the section 241.1 committee for review and recommendation. J.H. was adjudged a dependent of the court and placed in a foster care group home. The section 241.1 committee report recommended dual status with probation acting as lead agency. The court accepted the recommendation.

According to the jurisdiction/disposition report filed on October 30, 2018, CFS recommended (1) J.H. "remain in out of home care, and when released from custody, be placed in a STRTP[7] certified group home," (2) that no services be provided to either parent, and (3) that services offered to J.H. be "provided under the Permanency Planning

[7] STRTP stands for short term residential therapeutic program. (See <http://promesabehavioral.org/services/residential> [as of July 13, 2020].)

Living Arrangement due to the parents not wanting [her] returned to them." The same date, J.H. entered into a "Transitional Independent Living Plan & Agreement." On November 2, 2018, father waived reunification services, confirmed he did not wish to reunify with J.H., and submitted on the petition. The juvenile court ordered the permanent plan of placement to be a group home upon J.H.'s release from juvenile hall, with a specific goal of a less restrictive foster setting. On December 3, 2018, J.H. was placed at Promesa,[8] but 10 days later, she went AWOL. Her whereabouts remained unknown until she was picked up by probation on March 26, 2019. The section 241.1 committee continued to recommend dual status with probation as lead agency.

On April 15, 2019, CFS requested a hearing to consider a change in the permanent plan to include setting a section 366.26 hearing. Probation recommended, and J.H. (age 17) concurred in, placement at Mingus Mountain in Arizona. According to the status review report filed April 26, 2019, the current planned permanent living arrangement was "to maintain placement under 602 and transition into a lower level of care when deemed appropriate." J.H. "continue[d] to have weekly disruptions in juvenile hall with multiple assaults to peers and threats towards officers in her unit," she struggled with depression and stabilizing her mental health, she refused to visit her parents, and although she was offered treatment services, she "refused [to engage in] services and to participate in her" child and family team meetings.

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[8] Promesa Behavioral Health provides shelter and therapeutic care to youths. (See Health & Saf. Code, § 1502, subd. (a)(18).)

Effective April 30, 2019, San Bernardino County became a single status county and implemented a temporary single status protocol (temporary protocol). (§ 241.1, subd. (d); see San Bernardino County's § 241.1 committee single status protocol.)[9] Following this change, CFS moved to dismiss J.H.'s dependency case, and on May 14, 2019, the juvenile court granted the motion. J.H. appeals.

D. Postjudgment Evidence.

On December 6, 2019, the juvenile court ordered J.H. "released from juvenile hall to [CFS] on 02/19/2020" to allow her "to attain Non-Minor Dependent ('NMD') status, allowing her to receive continued services through CFS up until age twenty-one (21)."[10] On January 14, 2020, while J.H. was in juvenile hall, she "refused to speak with CFS staff and refused to accept CFS services, so her referral was closed." On February 19,

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[9] On September 20, 2019, J.H. filed a request for judicial notice. We hereby grant the unopposed request and take judicial notice of San Bernardino County's section 241.1 committee dual status protocol, dated February 2017, as modified; Judge Annemarie G. Pace's interagency memo, dated May 8, 2019; and San Bernardino County's section 241.1 committee single status protocol, dated June 2019 (*draft*). (Evid. Code, §§ 452, subd. (c) [courts may take judicial notice of the "[o]fficial acts of the . . . executive . . . department[]" of any state] 453, 459.)

[10] We have reviewed CFS's request for judicial notice filed March 10, 2020, as well as appellant's opposition to the request. We grant the request for judicial notice of the December 6, 2019 and February 20, 2020 certified minute orders from case No. J274534, and the declaration of CFS child welfare services manager Jane Canu. (Evid. Code, §§ 452, 453, 459; see *In re Josiah Z.* (2005) 36 Cal.4th 664, 675-677 [considering postjudgment evidence relating to request to dismiss an appeal in the best interest of the minor]; *In re Zeth S*. (2003) 31 Cal.4th 396, 405 ["It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.'"]; but see *id*., at p. 413, fn. 11 [suggesting "particular circumstances may give rise to an exception to the general rule that postjudgment evidence is inadmissible"].)

2020, J.H was released from custody and transported to CFS's office; she refused services. The next day, the court discharged J.H. (age 18), terminated formal probation, and dismissed the delinquency case. Father picked up J.H. from CFS's office.

II. DISCUSSION

J.H. appeals the dismissal of her dependency case. CFS argues her appeal is moot because she was discharged as a ward before her 18th birthday, and she rejected CFS's attempts to provide her services.

An appeal is rendered moot where subsequent orders in the dependency proceedings have resolved or determined the issues currently on appeal. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) "However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) Because J.H. raises issues of continuing public importance, including the need for a subsequent section 241.1 report and the validity of the temporary protocol, and she may continue to receive social services as a nonminor dependent, we exercise our discretion and address the merits of the appeal.

A. Standard of Review.

"In dependency cases, a juvenile court has jurisdiction to make orders pertaining to '[a]ny child who comes within any of the [statutory] descriptions' set forth in

subdivisions (a) through (j) of section 300. [Citation.] The *purpose of dependency law* '*is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm*.' [Citation.] As numerous courts have reiterated, '[t]he paramount purpose underlying dependency proceedings is the protection of the child." (*Imperial County Dept. of Social Services v. S.S.* (2015) 242 Cal.App.4th 1329, 1334, italics in original and added.) A juvenile court's order dismissing a dependency is reviewed for abuse of discretion. (*In re Twighla T.* (1992) 4 Cal.App.4th 799, 806 [no abuse of discretion to dismiss dependency jurisdiction pursuant to § 366.3, subd. (a), where there was substantial evidence that legal guardian cooperated in arranging visits].)

Likewise, "[w]e review the juvenile court's determination under section 241.1 for abuse of discretion. [Citation.] 'To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice.' [Citation.] Throughout our analysis, we will not lightly substitute our decision for that rendered by the juvenile court. Rather, we must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings where there is substantial evidence to support them." (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1506-1507 (*M.V.*); see *id*. at p. 1513 [reading § 241.1 as granting "broad discretion to the juvenile court when determining which status will best meet a particular minor's needs"].) However, to the

extent our analysis involves statutory interpretation, this is a legal matter that is subject to de novo review. (*In re Aaron J.* (2018) 22 Cal.App.5th 1038, 1054.)

B. Applicable Legal Principles.

"A child who has been abused or neglected falls within the juvenile court's protective jurisdiction under section 300 as a 'dependent' child of the court. In contrast, a juvenile court may take jurisdiction over a minor as a 'ward' of the court under section 602 when the child engages in criminal behavior. [Citations.] . . . [S]ection 241.1 sets forth the procedure that the juvenile court must follow when faced with a case in which it may have dual bases for jurisdiction over a minor." (*M.V.*, *supra*, 225 Cal.App.4th at pp. 1505-1506, fn. omitted.)

"Section 241.1 requires that whenever it appears a minor may fit the criteria of both a dependent child and a delinquent ward, the child protective agency and the probation department must jointly 'initially determine which status will serve the best interests of the minor and the protection of society.' [Citation.] Both agencies present their recommendations to the juvenile court, which then must determine the appropriate status for the child. [Citation.] *Dual jurisdiction is generally forbidden*; a minor may not be both a dependent child and a delinquent ward of the court absent a written protocol agreed upon by the presiding judge of the juvenile court, the child protective agency and the probation department." (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1123 (*D.M.*), italics added.) The statutory mandate is "augmented by rule 5.512, which requires the joint assessment under section 241.1 to be memorialized in a written report." (*M.V.*, *supra*, 225 Cal.App.4th at p. 1506.) However, neither Welfare and Institutions

Code section 241.1 nor California Rules of Court, rule 5.512, addresses a county's transition from dual to single status protocol.

C. Analysis.

At the inception of this case, San Bernardino County operated as a dual status/lead agency county. "Section 241.1, subdivision (e)(2), requires that any county which adopts a written protocol for a minor to be deemed 'dual status,' must adopt either an 'on-hold' system or a 'lead court/lead agency.' . . . [¶] 'In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.'" (*In re R.G.* (2017) 18 Cal.App.5th 273, 283 (*R.G.*).) Effective April 30, 2019, San Bernardino County became a single status county. Thus, dual jurisdiction over J.H. was prohibited. (§ 241.1, subd. (d); *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1012, 1015 (*Marcus G.*).) J.H. takes issue with San Bernardino County's temporary protocol and with the juvenile court's rulings, including its dismissal of her dependency case pursuant to the temporary protocol and section 241.1. We address her arguments in turn.

1. The juvenile court did not act in excess of its authority.

J.H. contends the "dependency department acted in excess of its authority in dismissing the section 300 petition pursuant to a section 241.1 jurisdictional hearing because the delinquency department already entered a dual status section 241.1 finding

based on the same evidence." She further asserts the dependency department was "the incorrect department to decide the matter under the local framework." We disagree.

Section 241.1 does not mandate that all hearings involving a dual status youth be conducted in one department. (§ 241, subd. (e)(5).) Rather, the statute provides, "*There shall not be any simultaneous or duplicative case management or services* provided by both the county probation department and the child welfare services department. It is the intent of the Legislature that *judges, in cases in which more than one judge is involved, shall not issue conflicting orders*." (§ 241.1, subd. (e)(5), italics added.) By its language, section 241.1 anticipates the involvement of more than one judge. However, to prevent "simultaneous or duplicative case management or services," the statute requires the designation of a lead agency. In turn, the lead agency provides the same current information and services concerning the dual status youth to both the dependency and delinquency departments of the juvenile court. Such was the case involving J.H. Since the filing of her section 300 petition in October 2018, both the dependency and delinquency departments of the juvenile court conducted hearings and issued orders with no objection by J.H. Moreover, J.H.'s claim that the delinquency court was the lead court is not supported by the record or section 241.1. There is no recommendation nor order designating either the dependency or delinquency department as the lead court. Rather, we note that on April 30, 2019, CFS asked "that the matter be set here in this jurisdiction." CFS added, "It was agreed by the parties and the protocol that this Court hear the matter as a dual." The court replied, "And the Court will find that since [J.H.] has been declared a ward, that this matter will be heard here to resolve that issue." No

objection was raised. We therefore reject the assertion the dependency department was not authorized to hear CFS's motion to dismiss.

We also reject J.H.'s claim that the dependency court could not dismiss her section 300 case since the delinquency department had entered dual status finding based on the same information. J.H. fails to take into account the fact that effective April 30, 2019, 25 days after the delinquency department entered a dual status finding, San Bernardino County became a single status county and implemented its temporary protocol. This change necessitated an end to her dual status. Moreover, her reliance on *In re Alberto* (2002) 102 Cal.App.4th 421, 426-427 (*Alberto*) and *People v. Ellison* (2003) 111 Cal.App.4th 1360, 1366-1367 (*Ellison*) is unavailing.

In *Alberto*, the appellate court held that after one judge of the superior court sets bail for a defendant, another judge of the superior court may not increase bail solely because the second judge believes the first judge erred—independent of the authority granted by Penal Code section 1289, which allows review of bail setting for good cause based on changed circumstances. (*Alberto*, *supra*, 102 Cal.App.4th at pp. 426-427.) "*Ellison* involved three judges. The first judge accepted the defendant's plea, but told the defendant he would be unavailable to impose sentence. Accordingly, the defendant waived his *Arbuckle*[11] rights and agreed to be sentenced by a second judge. [Citation.] At the sentencing hearing, the second judge ordered the defendant's immediate release from jail pending a final probation report. The jail did not release the defendant,

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11 *People v. Arbuckle* (1978) 22 Cal.3d 749 (entitles a plea-bargaining defendant to insist that the same court that accepts his plea also pass sentence).

however, because 'someone at the jail' contacted a third judge and asked that judge to put a 'hold' on the defendant. [Citation.] The defendant's case thereafter returned to the first judge, who withdrew the second judge's release order and ordered the defendant's imprisonment. [Citation.] On appeal, the defendant challenged his imprisonment, arguing the first judge had no jurisdiction to countermand the second judge's release order. The *Ellison* court agreed, holding the first and third judges overstepped their authority by interfering with the second judge's release order. [Citation.] The *Ellison* court explained that each county's superior court sits as one court, even if it is divided into different departments and courtrooms for administrative ease and practical necessity. As the various departments sit as 'one court,' orders entered in one department are binding on all departments. [Citation.] Hence, the first and third judges had no authority to overrule the second judge." (*People v. Martinez* (2005) 127 Cal.App.4th 1156, 1160-1161.)

In contrast to the judicial actions in *Alberto* and *Ellison*, here, the dependency department's dismissal of the dependency case did not conflict with the delinquency department's handling of J.H.'s case, since the dual status option was no longer available and probation would remain the responsible agency.

2. The postpermanent plan review hearing was not unauthorized.

J.H. contends "the May 2019 status determination hearing was also unauthorized as untimely under the rules" because "[s]tatus determinations under section 241.1 are required to take place 'quickly.'" According to J.H. because no new petition was filed, the juvenile court was not authorized to reconsider her status. Not so. The May 2019

hearing was not a status determination hearing under section 241.1, but a postpermanent plan review hearing in which CFS requested dismissal of the dependency case. J.H.'s arguments to the contrary are misdirected.

Assuming, without deciding, that the May 2019 hearing was a section 241.1 status determination hearing, we find that such hearing was necessitated by San Bernardino County's decision to implement a single status protocol, which required the assessment of J.H.'s status under the new protocol. Nonetheless, according to J.H., she remained subject to the protocol (dual status) in effect at the time her status was previously determined. (*People v. Buenrostro* (2018) 6 Cal.5th 367, 397, fn. 16 (*Buenrostro*).) However, the facts in *Buenrostro* are distinguishable. In that case, both the defendant and our Supreme Court referred to the repealed provisions of the Civil Discovery Act of 1986 (Code Civ. Proc., former §§ 2016-2036) that were in effect at the time of defendant's competency trial because they were what governed the proceeding. (*Buenrostro*, *supra*, 6 Cal.5th at p. 397, fn. 16.) Here, there was no trial or governing proceeding. Rather, J.H. was subject to the continuing jurisdiction of the juvenile court based on the circumstances presented in both her delinquency and dependency cases. Absent a clear directive (either from § 241.1 or the temporary protocol) that dual status cases remain dual status through completion, J.H. did not remain subject to the protocol (dual status) in effect at the time her status was previously determined.

3. There was no need for an updated joint assessment and recommendation report.

Upon the filing of the section 300 petition on October 9, 2018, a section 241.1 committee report was created by CFS and probation with the recommendation that probation act as lead agency. The report was filed on October 18, 2018. The juvenile court adopted the recommendation and declared J.H. a ward of the court subject to dual status supervision with probation as lead agency. As the lead agency, probation was statutorily "responsible for case management, conducting statutorily mandated court hearings, and submitting court reports." (§ 241.1, subd. (e)(5)(B).) Probation fulfilled its responsibilities. However, effective April 30, 2019, San Bernardino County ended the dual status/lead agency system and became a single status county. In response, CFS moved to dismiss J.H.'s dependency proceedings. At that time, CFS reported that it had complied with J.H.'s "case plan by making reasonable efforts, including whatever steps are necessary, to finalize the permanent placement of the child." The permanent plan was "to maintain placement under 602 and transition into a lower level of care when deemed appropriate." CFS offered to "refile before the minor's 18th birthday if she [was] dismissed as a ward" and it became necessary. J.H. objected to CFS's motion on the grounds, inter alia, the section 241.1 report was insufficient. (*R.G.*, *supra*, 18 Cal.App.5th 273.

On appeal, J.H. maintains the need for an updated joint assessment and recommendation report in light of the temporary protocol. She relies on *Marcus G.*, *supra*, 73 Cal.App.4th 1008, *In re Joey G.* (2012) 206 Cal.App.4th 343 (*Joey G.*), and *R.G.*, *supra*,

18 Cal.App.5th 273. This court recently addressed the same issue in *In re S.O.* (2020) 48 Cal.App.5th 781, 788-790 (*S.O.*), and concluded the child welfare department's requested dismissal of dependency proceedings, effectively modifying the juvenile court's jurisdiction from dual to single status, did not trigger the requirements of section 241.1, necessitating an updated joint assessment and recommendation. For the reasons stated in *S.O.*, we reject J.H.'s contention.

As in *S.O.*, J.H.'s reliance on *Marcus G.*, *Joey G.*, and *R.G.*[12] is misplaced. In each of those cases, reversal was warranted because the juvenile court was not presented with a joint assessment by the probation and child welfare departments, as required by section 241.1, upon the *filing of a subsequent petition, which created a dual status*. (*Marcus G.*, *supra*, 73 Cal.App.4th at p. 1017; *Joey G.*, *supra*, 206 Cal.App.4th at p. 349; *R.G.*, *supra*, 18 Cal.App.5th at pp. 290-293.) While those cases involved the actions taken at the *inception* of a dual status jurisdiction case, this case does not. Here, the *inception* of dual status jurisdiction occurred in 2018, and the requirements of section 241.1 were followed.

[12] *R.G.* was not discussed in *S.O.* In *R.G.*, "the [juvenile] court effectively held the section 241.1 hearing . . . without the benefit of a section 241.1 assessment report and without notifying the proper parties that it would be making a section 241.1 determination at that hearing." (*R.G.*, *supra*, 18 Cal.App.5th at p. 290.) We found that absence of a report and notice "directly implicated" the minor's due process rights and constituted prejudicial error. (*Id.* at pp. 290-293.)

Nothing in the language in section 241.1 contemplates the modification of jurisdiction presented in this case.[13] (§ 241.1, subds. (a), (f); *S.O., supra*, 48 Cal.App.5th at pp. 788-790.) Rather, at this stage in J.H.'s dependency proceedings, no joint recommendation report was required to dismiss the dependency action. "Because no report was required, it follows that any error in the manner it was prepared is necessarily harmless." (*D.M., supra*, 173 Cal.App.4th at p. 1124 [no § 241.1 report required since minor was not a ward when the court assumed jurisdiction over her as a dependent child].) Moreover, as further discussed in section II.C.5., *post*, the record contains ample

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[13] Section 241.1, subdivision (a), provides: "Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented."

Section 241.1, subdivision (f), provides: "Whenever the court determines pursuant to this section or Section 607.2 or 727.2 that it is *necessary to modify the court's jurisdiction over a dependent or ward who was removed from his or her parent or guardian and placed in foster care*, the court shall ensure that all of the following conditions are met: [¶] (1) The petition under which jurisdiction was taken at the time the dependent or ward was originally removed is not dismissed until the new petition has been sustained. [¶] (2) The order modifying the court's jurisdiction contains all of the following provisions: [¶] (A) Reference to the original removal findings and a statement that findings that continuation in the home is contrary to the child's welfare, and that reasonable efforts were made to prevent removal, remain in effect. [¶] (B) A statement that the child continues to be removed from the parent or guardian from whom the child was removed under the original petition. [¶] (C) Identification of the agency that is responsible for placement and care of the child based upon the modification of jurisdiction." (Italics added.)

evidence to support a finding that J.H. and society would best be served by dismissing the dependency case but continuing her as a ward of the court.

4. There is no right to a full evidentiary hearing.

J.H. contends the juvenile court violated her due process right to have her social worker present at the hearing resulting in the termination of dependency jurisdiction. We disagree. There is no constitutional requirement for a full evidentiary hearing in every instance where a statute (here § 241.1) requires the juvenile court to make a finding. Rather, "[s]ection 241.1 only requires a judicial determination whether to treat a child who appears to come within the description of section 300 and either section 601 or 602 as a dependent child or delinquent ward. Rule 1403.5 mandates that if the juvenile court sets a hearing to aid its determination, only the parties and their attorneys must have the opportunity to be heard. Of course, nothing precludes the juvenile court from exercising its discretion to grant a full hearing and permit additional evidence. A full hearing, however, generally is unnecessary where the juvenile court has before it sufficient evidence in the section 241.1 assessment report to make an informed decision." (*In re Henry S.* (2006) 140 Cal.App.4th 248, 259.) Here, because the court had sufficient evidence in the section 241.1 assessment report and CFS's status review report, we conclude the court acted within its discretion in denying the request to have the social worker present.

5. The juvenile court complied with the statutorily mandated requirements and did not err in dismissing the dependency case.

J.H. faults the juvenile court for failing to apply and "conform with the statutorily required procedures as set forth under any version of San Bernardino County's section 241.1 protocol" and "rule 5.512(g)," which requires the court to state its reasoning on the record in making a section 241.1 status determination. More specifically, she asserts the need for a "new joint assessment," as well as an express ruling as to why "single status delinquency jurisdiction was in J.H.'s best interest or society's." She contends "there is no indication the court considered, for example the impact the court's decision would have on [her] ability to continue to receive [CFS] services or maintain meaningful agency assistance to help her transition into extended foster care as she approached adulthood." For the reasons expressed in sections II.C.2. & II.C.3., *ante,* we find no fault in the court's compliance with the applicable statutory requirements.

Even assuming arguendo that a joint recommendation report was required, the record shows that such report was filed on April 2, 2019, and again on April 5, 2019. Additionally, CFS filed a status review report on April 26, 2019. These reports provided the juvenile court with the following information: (1) J.H.'s prior dependency proceedings and the reason for the current dependency proceedings; (2) her parents' criminal background; (3) her history of going AWOL from her group placements; (4) her failure to attend school; (5) her mental diagnosis and refusal to take prescribed medicine; (6) her history of incorrigible or delinquent behavior, including multiple assaults to peers and threats toward officers in juvenile hall; (7) the services that were offered to her;

(8) her refusal to participate in any services offered, including child and family team meetings; and (9) her refusal to visit with her parents. The permanent plan was to maintain placement under section 602 and transition into a lower level of care when deemed appropriate. Moreover, CFS informed the court that it would "refile before the minor's 18th birthday if she [was] dismissed as a ward" and it became necessary.

Any technical deficiencies in the joint recommendation report or the juvenile court's failure to make the required findings in support of its ruling were harmless given the court's broad discretion in determining J.H.'s status—dependent or ward—and the ample information on which the court based its decision. (Compare *M.V.*, *supra*, 225 Cal.App.4th at p. 1511 [because "the vast majority" of the evidence that minor complained was missing from the recommendation report was before the court from other sources, "any technical deficiencies in the assessment were harmless"] with *R.G.*, *supra*, 18 Cal.App.5th at p. 290 ["harmless beyond a reasonable doubt standard is applicable because the court effectively held the section 241.1 hearing . . . without the benefit of a section 241.1 assessment report and without notifying the proper parties that it would be making a section 241.1 determination at that hearing"].) With the exception of a six-month period, J.H. was a dual status youth from January 2016 to May 2019 and the individual circumstances unique to her were being sufficiently addressed. Regarding the dependency aspect of the matter, there were no plans to return J.H. to her family since her mother did not want to be involved, her father refused to take custody of her, and there were no other relatives available for placement. Although J.H. was placed in several group homes, she repeatedly absconded from her assigned placements. (See *M.V.*, at

p. 1512 [minor's history of absconding from her § 300 placements warranted the court's determination to declare her a ward].)

Despite J.H.'s repeated refusal to accept CFS's attempts to provide her with various services and assistance throughout her dependency, she now expresses concern about the impact that the juvenile court's decision would have on her ability to continue to receive such services and assistance. Given CFS's representations at the May 2019 hearing, and the court's subsequent orders, her concerns are unwarranted: The court directed, and CFS agreed to continue, the necessary social services to J.H. as a nonminor dependent. However, J.H. "refused to speak with CFS staff and refused to accept CFS services." Thus, it is J.H.'s decision, not the court's, that has affected her ability to continue to receive CFS services and assistance.

6. The temporary protocol complied with state law.

J.H. contends the temporary protocol "violates state law as applied to [a] youth who already received a dual status determination under a previous version of the county protocol." However, she is unable to point to any law in support of her contention.[14] According to section 241.1, the single status protocol is the default. (§ 241.1, subd. (e).) Moreover, counties are empowered to decide whether to operate under a single or dual

[14] In a footnote in her opening brief, and during oral argument, J.H. referenced California Rules of Court, rule 5.512(i). Rule 5.512 is entitled "Joint assessment procedure." Subdivision (i) provides: "**Local protocols** [¶] On or before January 1, 2004, the probation and child welfare departments of each county must adopt a written protocol for the preparation of joint assessment reports, including procedures for resolution of disagreements between the probation and child welfare departments, and submit a copy to the Judicial Council." When San Bernardino County returned to be a single status county in April 2019, it implemented the temporary protocol.

status protocol. (*Ibid*.) Although J.H.'s counsel individually objected to the county's return to single status protocol, the temporary protocol was approved by probation, CFS, the district attorney, the public defender, and the juvenile court. J.H.'s reliance on *In re H.C.* (2017) 17 Cal.App.5th 1261 is misplaced. In that case, the San Diego County Department of Social Services published an all-county letter, which described the "policies and procedures governing the extended foster care program. The All-County Letter state[d] that nonminors who are married, are in the military, or are incarcerated (among others) are not eligible for extended foster care." (*H.C.*, at p. 1263.) Consequently, once it was discovered that H.C., a nonminor dependent, was married, San Diego County Health and Human Services Agency requested the juvenile court terminate her dependency case. (*Ibid*.) The lower court granted the request, and the appellate court reversed. (*Ibid*.) The Court of Appeal held that the applicable state laws governing extended foster care for nonminor dependents do not mention marriage and, thus, a "nonminor dependent's marriage [did] not necessarily affect any of [the] eligibility criteria."[15] (*Id*. at p. 1266.) Contrary to the agency's contention, the all-county letter, which was "merely an interpretation of the statute," (*id*. at pp. 1268-1269) did not override the statutory authority (*id*. at p. 1268-1270). Here, in contrast, section 241.1 provides every county with the authority to establish a dual status protocol or, by default, operate under a single status protocol.

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[15] "[T]he statutes cover only a nonminor dependent's age, his or her relationship to the Agency, and his or her transitional living plan." (*H.C.*, *supra*, 17 Cal.App.5th at p. 1266.)

7. Harmless error.

J.H. contends that each of the errors she identified, individually and cumulatively, infringed upon her "statutory rights and her due process right to fundamental fairness in the proceedings." CFS argues that even if we assume the juvenile court "did err with procedures, J.H. fails to demonstrate she was prejudiced, even when applying the harmless beyond a reasonable doubt standard." (*In re J.H.* (2007) 158 Cal.App.4th 174, 182-186 [regarding the prejudicial effect of defective notices; due process violations in dependency proceedings have been held to the harmless beyond a reasonable doubt standard of prejudice].) While we have found no errors, we agree that even if the court erred, J.H. has failed to demonstrate prejudice.

In her reply brief, J.H. contends that, absent the juvenile court's errors, she "would have likely remained a dual status youth, as contemplated by the protocol that governed at the time of the delinquency department's timely decision rendered in [her] favor." Given San Bernardino County's transition to a single status county, and the fact that her permanent plan did not include family reunification, we disagree. Even so, she claims that reversal of the "May 2019 section 241.1 disposition order would have the beneficial effect of necessitating the deletion of fines that have, since, been ordered against her in that case." (§ 730.6, subd. (g)(2) ["[i]f the minor is a person described in subdivision (a) of Section 241.1, the court shall waive imposition of the restitution fine"]; *In re Aaron J.* (2018) 22 Cal.App.5th 1038, 1060.)

According to the juvenile court's minute order dated December 6, 2019, J.H. violated probation on October 7, 2019, and was ordered to make monthly payments of

$27.50. However, the court also ordered J.H. released just prior to her 18th birthday so she could receive extended foster care services. CFS complied with the order, but J.H. refused to speak with the social worker. Although J.H. may be prejudiced by the imposition of restitution fines, the prejudice she may suffer does not result from the court's alleged procedural errors but, rather, from the result of her own actions.

On the merits, there was no reason to continue dependency jurisdiction over J.H. Neither parent wanted to reunify with her, her permanent plan was to maintain placement under section 602 and transition into a lower level of care when deemed appropriate and, if she was dismissed as a ward, CFS was prepared to refile a dependency petition prior to her 18th birthday.

III. DISPOSITION

The order dismissing J.H.'s dependency case is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

FIELDS
J.

MENETREZ
J.